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4/617 (2)

IN THE HIGH COURT OF JUDICATURE : AT JABALPUR.

Criminal Appeal No. 1094 /1996.

Appellant : Shankerlal Soni S/o Shri Ramcharit Soni, aged 50 years, Occupation, Assistant Food Officer, Korba, Dist. Bilaspur,

At present, Assistant Food Officer, Dhamtari District Raipur, M.P.

-Vs-

Respondent: State of Madhya Pradesh, through Police Station, Special Police Establishment, Lokayukt Office, Bilaspur, M.P.

CRIMINAL APPEAL UNDER SECTION 374(2) OF THE CODE OF CRIMINAL PROCEDURE, 1973.

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A.F.R.

HIGH COURT OF CHHATTISGARH AT BILASPUR

Before: Hon'ble Shri Justice Dilip Raosaheb Deshmukh

Criminal Appeal No.1094/1996

Shankar lal Soni

Vs.

State of Madhya Pradesh (now State of Chhattisgarh)

Post for: 18-08-2006

Sd/-
Dilip Raosaheb Deshmukh
Judge

A.F.R.

HIGH COURT OF CHHATTISGARH AT BILASPUR

Before: Hon'ble Shri Justice Dilip Raosaheb Deshmukh

Criminal Appeal No.1094/1996

Shankar lal Soni

Vs.

State of Madhya Pradesh (now State of Chhattisgarh)

Shri Prafull Bharat, learned Counsel with Shri A.K.Prasad, Counsel for the appellant.
Shri Parag Kotecha, Panel Lawyer for the State.

J U D G M E N T

(Delivered on this 18th day of July 2006)

This appeal is directed against the judgment dated 29-06-1996 delivered by Shri M.Y.Khan, Special Judge, Bilaspur in Special Criminal Case No.02/1995 whereby the appellant was convicted under Section-7 & Section-13(1)(D) read with Section-13(2) of the Prevention of Corruption Act (hereinafter referred to as the "Act") and was sentenced to undergo rigorous imprisonment for 1 year and fine of Rs.400/- and in default to undergo simple imprisonment for 3 months.

2. Briefly stated the prosecution story is that at the relevant time the appellant was posted as Assistant Food Officer, Korba. Bajranglal was running a Fair Price Shop in S.E.C.L., Mudapar, Korba. There were some complaints relating to improper distribution of foodgrains. The appellant had served the notice on Bajrang lal Soni in the year-1991. On 25-01-1992, Bajrang lal Soni went to the house of the appellant where the appellant demanded Rs.1,000/- from Bajrang lal Soni and on failure to do so, threatened him to forfeit the shop. Bajrang lal Soni expressed his inability to pay the amount. Finally, a sum of Rs.500/- was settled

which Bajrang lal Soni promised to pay within 3-4 days. Bajrang lal Soni replied to the notice on 31-01-1992. He gave the distribution register of Fair Price Shop to the appellant who repeated demand of Rs.500/-. Upon this Bajrang lal Soni made a complaint to Deputy Superintendent of Police (Vigilance), Bilaspur vide Ex.P-7. A trap party headed by Deputy Superintendent of Police Shri S.K.Verma and comprising of Inspector M.K.Tiwari, PW-10, R.B.Mishra, A.D.I.S. PW-4 and R.C.Shrivastava, Assistant Statistical Officer, PW-6 was constituted. Bajrang lal Soni supplied the 5 currency notes of Rs.100/- each to Inspector M.K.Tiwari. After complying with the necessary formalities regarding application of Phenolphthalein Powder to the currency notes, preparation of sodium carbonate solution etc., a trap party comprising of Inspector M.K.Tiwari, Deputy Superintendent of Police S.K.Verma, R.D.Diwan, Inspector R.J.Toppo, Head Constable Ram Bahadur and Constable A. Ekka proceeded to the government house of the appellant. Before doing so, it was ensured by Inspector M.K.Tiwari PW-10 after taking search of Bajrang lal Soni that no other article was in his possession except Phenolphthalein Powder applied currency notes. Bajrang lal Soni went to the house of the appellant. He returned soon and informed that the appellant had asked him to come after half an hour. Thereafter, Bajrang lal Soni was again sent to the house of the appellant while D.S.P. S.K.Verma and witness R.C.Shrivastava PW-6 stood near the boundary wall and watched. Bajrang lal Soni went to the house of the appellant and stood outside the outer gate in the courtyard. After sometime, the appellant emerged from his quarter and said " Soni, I will do your work". After some time, Bajrang lal Soni after giving the bribe gave a signal by coughing whereupon Inspector M.K.Tiwari PW-10 went with Inspector Shri R.J.Toppo and saw that the appellant was wearing lungi and shirt and was holding the currency notes in his left hand. On being asked, the appellant threw the notes on the lawn. Both hands of the appellant were

washed in the Sodium Carbonate solution whereupon the solution turned pink. The Currency notes lying in the lawn were seized. The register of the Fair Price Shop was seized vide Ex.P-21. Notice dated 13-01-1992 sent by the appellant vide Ex.P-12 was also seized. After obtaining sanction vide Ex.P-13 for prosecuting the appellant, prosecution was launched against the appellant.

3. The appellant abjured the guilt and pleaded false implication. The prosecution examined as many as 10 witnesses. In his examination under Section-313 of Cr.P.C. the appellant took the defence that in view of the serious irregularities committed by Bajrang lal Soni in his fair price shop, he had already suspended the fair price shop of the Bajrang lal Soni vide order dated 31-01-1992 Ex.D-6 and had attached the shop to one Shri Arun Goswami who was In-charge of a Government Fair Price Shop. On 01-02-1992 Bajrang lal Soni had while stating that he had deposited the challan for Rs.150/- thrust the currency notes in his hand. When he realized this, he immediately threw the notes. He had never demanded any bribe from Bajrang lal Soni. In defence P.K.Jagat, Retired Accountant in Food Department at Bilaspur and M.K.Qureshi, Food Inspector were examined as D.W.-1 & D.W.-2. Relying upon the evidence led by the prosecution, the learned trial Judge convicted and sentenced the appellant as aforesaid in para-1. (Supra)

4. Shri Prafull Bharat, learned counsel for the appellant contended that antecedents of the appellant showed that he had a criminal background since many cases were pending against him in Criminal Courts. It was also urged that there was no independent witness to corroborate the testimony of Bajrang lal Soni that the appellant had demanded a sum of Rs.500/- as illegal gratification. The evidence led by the defence clearly showed that the licence of the fair price shop of

Bajrang lal Soni had already been suspended by the appellant on 31-01-1992 which negatived the testimony of Bajrang lal Soni that on 01-02-1992 the appellant accepted bribe of Rs.500/- from him. It was argued that the evidence led by the defence and the facts and circumstances emerging from the prosecution evidence rebutted the presumption arising against the appellant under Section-20(1) of the Prevention of Corruption Act. On these premises, it was urged that conviction of the appellant under Section-7 & Section-13(1)(D) read with Section-13(2) of the Prevention of Corruption Act was liable to be set aside. On the other hand, Shri Ashish Shukla, learned Govt. Advocate argued in support of the impugned judgment.

5. In **State of Andhra Pradesh Vs. C. Uma Maheswara Rao and another** reported in **A.I.R.-2004-Supreme Court-2042**, it was held that the expression "shall be presumed" employed in Section-20(1) of the Prevention of Corruption Act has to be understood in tone of a command that it has to be presumed that the accused accepted the gratification as a motive or reward for doing or forbearing to do any official act etc. The only condition for drawing such a legal presumption under Section-20 is that during trial it should be proved that the accused has accepted or agreed to accept any gratification. The Section does not say that the said condition should be satisfied through direct evidence. Its only requirement is that it must be proved that the accused has accepted or agreed to accept gratification. In reaching the conclusion the Court can use the process of inferences to be drawn from facts produced or proved which are akin to presumptions in law. Law gives absolute discretion to the Court to presume the existence of any fact which it thinks likely to have happened. In that process, the Court may have regard to common course of natural events, human conduct, public or private business vis-à-vis the facts of the particular

case. Such a discretion is clearly envisaged in Section-114 of the Evidence Act.

6. Scanning the evidence on the above touchstone, Bajrang lal Soni PW-7 admitted in para-14 of his testimony that 10 to 12 criminal prosecutions were pending against him. This goes to show that Bajrang lal Soni was a man of criminal antecedents. According to him, a notice was served upon him by the appellant for certain irregularities committed by him in distribution of foodgrains. It emerges from his complaint Ex.P-7 that the appellant had agreed to his offer and demanded a bribe of Rs.500/- somewhere between 25th or 26th January, 1992. Bajrang lal Soni stated that no other witness was present, then. However, this allegation is not borne out from his testimony since it does not show anywhere that the appellant had either demanded or had agreed to accept illegal gratification of Rs.500/- for not suspending his fair price shop.

7. Shri R.K.Jagat, D.W.-1, Retired Accountant has deposed that on 26th January, 1992 the material received from Bhopal for preparation of ration cards were distributed to the appellant at Bilaspur. In cross-examination, his testimony stood unrebutted. Thus, there is no cogent and reliable evidence on record which goes to show that either on 25th or 26th January, 1992, the appellant had agreed to the offer made by Bajrang lal Soni and had demanded illegal gratification of Rs.500/-.

8. The trap was laid on 01-02-1992 after a complaint being lodged by Bajrang lal Soni on the same day vide Ex.P-7. However document Ex.D-6 clearly goes to show that the appellant had already suspended the fair price shop of Bajrang lal Soni due to serious irregularities relating to distribution of foodgrains and had placed the shop in charge

of one Shri Arun Goswami who was Incharge of the Govt. Fair Price Shop. This circumstance is a pointer to the innocence of the appellant and shows that he was an honest and upright Officer.

9. The testimony of M.K.Qureshi, D.W.-2, Food Inspector in para-4 clearly goes to show that after the shop of Bajrang lal Soni was suspended by the appellant, Bajrang lal Soni threatened the appellant and had said that he would approach the minister. This fact coupled with the criminal antecedents of Bajrang lal Soni would have to be borne in mind while appreciating the evidence.

10. The testimony of Bajrang lal Soni PW-7 in para-7 shows that when he was sent to the house of the appellant by the trap party, the appellant was not present in the house. Thereafter, he came out of the house. On the other hand, Inspector M.K.Tiwari PW-10 stated that when Bajrang lal Soni was sent to the house of the appellant he returned and informed him that the appellant had asked him to come after an hour. This is in absolute contradiction of the testimony of Bajrang lal Soni in para-17 that the appellant was not present at the house and his wife had asked him to come after sometime. It definitely shows that Bajranglal Soni has suppressed the truth. It also shows that in his first visit the appellant did not accept the money from him.

11. In para-5, Bajrang lal Soni clearly stated that before entering the premises of the house of the appellant, five currency notes of Rs.100/- each after application of Phenolphthalein Powder were kept by D.S.P. Shri Verma in his pocket. Ashish Shrivastava, Assistant Statistical Officer PW-6 has stated that after returning from the house of the appellant Bajrang lal Soni had gone to some unknown place and had returned after half an hour. There is absolutely no material on

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record to show that after return of Bajrang lal Soni and before his being sent again to the appellant's house it was ensured by Inspector M.K.Tiwari PW-10 that the five currency notes kept by him in the pocket of Bajrang lal Soni were in its place and no other paper was seen there. R.B. Mishra PW-4 has stated in para-5 of his testimony that after return from the house of the appellant, Bajrang lal Soni told that the appellant had called him after half an hour and thereafter he went home and returned after an hour. Thus, it is extremely doubtful as to what had transpired when Bajrang lal Soni first went to the house of the appellant and returned. If the appellant was present at the house as narrated by R.B. Mishra PW-4, R.C.Shrivastava PW-6 and Inspector M.K.Tiwari PW-10, it is clear that Bajrang lal Soni was wholly unsuccessful in handing over the bribe amount to the appellant in his first visit. The evidence of Inspector M.K.Tiwari, PW-10 does not show that even before his visit to the house of the appellant he had searched Bajrang lal Soni or that he did so when Bajrang lal Soni visited the house of the appellant for the second time to ensure that he did not have anything except the five currency notes in his pocket. Considering the criminal antecedents of Bajrang lal Soni and the testimony of M.K.Qureshi D.W.-2 in para-4, it cannot be ruled out that after his unsuccessful first visit to the house of the appellant Bajrang lal Soni went home with some ulterior motive to get the appellant trapped in a deceitful manner.

12. Inspector M.K.Tiwari PW-10 stated that he saw the appellant emerging from his quarter and heard him saying "Come Soni, I will do your work". It is not corroborated by any other witness. Bajrang lal Soni PW-7 did not depose about any such statement having been made by the appellant but said that the appellant had asked him if he brought the money and had demanded the bribe. It is pertinent to note that Ashish Shrivastava, Assistant Statistical Officer PW-6 has categorically

stated in para-4 that it was only after Bajrang lal Soni came out of the premises of the house of the appellant, he had, alongwith members of the trap party entered the premises. If this was true, the appellant, had he accepted the bribe, would have pocketed the money by this time.

13. The testimony of Bajrang lal Soni in para-21 also goes to show that when the trap party entered the premises of the house of the appellant, the currency notes given by him were not in the hands of the appellant but were lying on the ground. This also goes to show that the appellant, after the currency notes were thrust in his hand in some deceitful manner by Bajrang lal Soni, immediately threw the notes on the lawn. The testimony of Inspector M.K.Tiwari that on entering the premises he saw the appellant holding currency notes in his left hand and upon his asking the appellant threw the notes on the ground fails to inspire confidence. It is noteworthy that although Inspector M.K.Tiwari PW-10 has stated that the appellant was holding the notes in his left hand yet the panchnama of hand washing of the appellant goes to show that washing of both the hands of the appellant in colourless solution had turned pink. It thus cannot be ruled out that the appellant had upon realizing that Bajrang lal Soni was handing over the notes on the pretext of delivering the challan to him, had pushed the notes with both his hands due to which the notes fell on the ground and in this manner both his hands got tainted with phenolphthalein powder. The testimony of Bajrang lal Soni clearly shows that the appellant had thrown the notes to the ground before arrival of the trap party. Bajrang lal Soni has in para-21 not denied the suggestion that on the ground near the currency notes a piece of paper was also lying.

14. The testimony of R.B.Mishra PW-4 also shows that he had absolutely no knowledge as to where Bajrang lal Soni had gone after returning from the house of the appellant for the first time. It is also

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clear from his testimony in Para-14 that when Bajrang lal Soni went to the house of the appellant for the second time it was dark. This renders testimony of Inspector M.K.Tiwari PW-10 doubtful that he had not only seen the appellant accepting the bribe but had also heard the conversation in which the appellant said to Bajrang lal Soni "Come Soni, I will do your work"

15. Having thus considered the evidence led by the prosecution in its entirety with utmost circumspection, the following facts emerge:-

(A) There is no evidence to show that in between 25th or 26th January,1992, the appellant had demanded a bribe of Rs.500/- from Bajrang lal Soni. The testimony of P.K.Jagat DW-1 also does not rule out the possibility that the appellant was not in Korba on 26th January, 1992 but was present at Bilaspur.

(B) The appellant had already suspended the fair price shop of Bajrang lal Soni vide order dated 31-01-1992 and had placed it in charge of one Shri Arun Goswami, Incharge of Govt. Fair Price Shop. It is thus unnatural that the appellant would have accepted a bribe of Rs.500/- from Bajrang lal Soni on 01-02-1992 for saving his shop from being suspended.

(C) On his first visit to the the house of the appellant on 01-02-1992 Bajrang lal Soni was not successful since the appellant had asked him to come after an hour which goes to show that the appellant did not accept the bribe from Bajrang lal Soni, during his first visit.

(D) Bajrang lal Soni separated from the trap party at this juncture, went home and returned after an hour which does not rule out the possibility that during this time he had planned to deceitfully tempt the appellant to accept the bribe money under the garb of some other document. He suppressed

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the truth of his unsuccessful first attempt by deposing falsely that wife of the appellant had asked him to come after some time.

(E) It emerges from the evidence that the alleged handing over of the bribe amount was after sunset while it was dark. It does not rule out the possibility that the appellant could not have seen what Bajrang lal Soni was handing over to him on the lawn of his house.

(F) The fact that till the arrival of trap party, currency notes were lying on the lawn and had not been pocketed by the appellant, proves the innocence of the appellant and renders his defence plausible.

(G) Criminal antecedents of Bajrang lal Soni and the fact that the appellant had already suspended his fair price shop due to serious irregularities committed by him coupled with the testimony of M.K.Qureshi D.W.-2 in para-4 does not rule out the possibility that Bajrang lal Soni had got the appellant trapped by deceitful means.

(H) The evidence led by the prosecution show that Inspector M.K.Tiwari PW-10 had, after the first visit of Bajrang lal Soni to the house of the appellant was not successful, ensured that he remained with the trap party. He permitted Bajrang lal Soni to leave the trap party. When Bajrang lal Soni returned after an hour, it was dark. At that time, it was not ensured by Inspector M.K.Tiwari PW-10 that five currency notes of Rs.100/- were not rapped in any other paper but had been exclusively kept in the pocket of Bajrang lal Soni. This also does not rule out the possibility that during dark hours Bajrang lal Soni had thrust the currency notes in the hands of the appellant by deceitful means.

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(I) The testimony of R.C.Shrivastava PW-6 clearly shows that trap party had entered the premises only after Bajrang lal Soni came out. The fact that despite this currency notes had not been pocketed by the appellant and were seen lying on the lawn proves the innocence of the appellant.

(J) In the aforesaid facts and circumstances, the presumption under Section-20(2) of the Act against the appellant stands wholly rebutted and it becomes plausible that the appellant did not accept the currency notes which were thrust in his hand along with some paper by Bajrang lal Soni by deceitful means and he had immediately pushed the notes on the ground with his hands.

16. In view of the foregoing reasons, conviction of the appellant under Section-7 & Section-13(1)(D) read with Section-13(2) of the Prevention of Corruption Act and the sentence awarded thereunder by the learned trial Judge is liable to be set aside.

17. In the result, the appeal is allowed. Conviction of the appellant under Section-7 & Section-13(1)(D) read with Section-13(2) of the Prevention of Corruption Act and the sentence awarded thereunder by the learned trial Judge is set aside. The appellant is acquitted.

Sd/-
Dilip Raosaheb Deshmukh
Judge